IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2226 of 1988

WITH

SPECIAL CIVIL APPLICATION NO. 2227 OF 1988

AND

SPECIAL CIVIL APPLICATION NO. 3480 OF 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI B PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner

MR PREMAL JOSHI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 12/01/2001

COMMON ORAL JUDGEMENT

1. All these three petitions raise similar grounds and have been argued together by the learned counsel.

2. The petitioners have raised a grievance against the communication of adverse remarks made against them and have prayed for setting aside such adverse remarks. According to the petitioners, the adverse remarks have been made in breach of the instructions contained in the Government Resolution dated 8th March 1969, and that they are arbitrary, malafide and violative of the constitutional rights of the petitioners under Articles 14 and 16.

3. In Special Civil Application No.2226/1988, the adverse remark communicated to the petitioner for the period from 1/4/1986 to 31/3/1987 while he was working as a Sales Tax Officer, was that his maturity as an officer was not adequate. It is clear from the communication dated 14/5/1987, at Annexure `B' to that petition, that the adverse remark was communicated to the petitioner who was given an opportunity to make a representation against it. It is also admitted position that personal hearing was given to the petitioner.

3.1 In the affidavit in reply filed on behalf of the respondent No.2, it has been stated in para 6 that, in response to the representation of the petitioner, it was decided to give an opportunity to the petitioner to improve his performance and the remarks were decided to be treated as reformative and not adverse. It is stated that performance of the concerned officer in the Sales Tax Department is required to be recorded in the monthly diary prepared by the concerned officer and on receipt of that diary, the reporting officer prepares his remarks for the relevant month, a copy of which is endorsed to the reviewing officer. The reviewing officer prepares his remarks on the basis of his assessment at the end of three months after taking into consideration the assessment of the reporting officer. The monthly diaries are taken as a basis for preparation of the confidential reports and the reporting officer takes into consideration each and every aspect of the performance of the concerned officer while preparing the confidential reports. The reviewing officer prepares confidential reports after considering the contents of the monthly diaries as well as remarks of the reporting officer. It is denied that the adverse remarks are given on the basis of the caste or creed, as alleged by the petitioner.

4. In Special Civil Application No.2227/1988, the petitioner has challenged the adverse remarks at Annexure

`A' to the petition, by which the petitioner who was a Sales Tax Officer, was described as a person lacking in initiative, foresight and administrative capacity, and who was unable to extract work from his subordinates. He was also described as an officer lacking in maturity. By communications dated 10/12/1985 and nil/5/1987, at Annexure `A' collectively, he was given an opportunity to represent against the adverse remarks. After considering his representation and giving him an opportunity of being heard, the petitioner was informed by the communication dated 5/10/1987, at Annexure `C-1', that his representation was rejected.

4.1 In the affidavit in reply filed on behalf of the respondent No.2, it has been stated that the adverse remarks were retained after considering all the relevant factors of the petitioner's case. It is stated that the petitioner was given a personal hearing in the matter on 15/10/1986. In this affidavit also, the procedure adopted for preparing the confidential report is reiterated.

5. In Special Civil Application No.3480/1988, the petitioner is a Sales Tax Officer, who challenges the adverse remarks communicated to him on 14/5/1987, as per Annexure `A' to the petition, for the period from 1/4/1986 to 31/3/1987, by which he was described as a person who was irregular in his duties and lacking in maturity. By the said communication, the petitioner was given an opportunity to represent his case. He was personally heard and as stated in the affidavit in reply, after considering his representation and the relevant record, the petitioner was informed on 15/10/1987 that the adverse remarks were retained in the service record.

6. It is thus clear that, in all these three cases, the petitioners have been given an adequate opportunity of representing against the adverse remarks and the decisions have been taken by the concerned authority after taking into account their representations and giving them an adequate opportunity of being heard in the matter. This Court cannot sit in judgement over the opinion of the competent authority reflected in the adverse remarks. There is nothing to justify any inference that the adverse remarks were made with any malafide intention to harm the petitioners. There is no ground to hold that the assessment of the merits of the petitioners done by the competent authority can be treated, in any way, as arbitrary or without any factual basis. Nothing has been brought on record to justify any intervention by the Court in exercise of its writ

jurisdiction which is invoked against the adverse remarks. In Bharatram Meena v/s Rajasthan High Court and others, reported in 1997 (ii) LLJ 200, the Supreme Court, in a case where the officer was given an opportunity to make a representation against the report, and he did make the representation, and where nothing was brought on record justifying intervention and calling for interference in the confidential report, held that there was no reason for interference by the Court.

7. In the above view of the matter, there is no substance in any of these petitions. The petitions are therefore rejected. Rule is discharged in each of them with no orders as to costs.

[R.K.ABICHANDANI, J.]

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